

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
CGG VERITAS LAND, INC.) File No. 0003313571
)
Request for Waiver of Section 90.259(a) of the)
Commission's Rules)

MEMORANDUM OPINION AND ORDER

Adopted: February 22, 2011

Released: March 3, 2011

By the Commission:

I. INTRODUCTION

1. This item affirms the dismissal of an untimely petition for reconsideration of a waiver of the technical limits on secondary telemetry use of the 217-220 MHz band. In the *Order on Reconsideration* in this proceeding,¹ the Wireless Telecommunications Bureau's Mobility Division ("Division") dismissed a petition for reconsideration filed by AMTS Consortium LLC ("ACL"), Intelligent Transportation & Monitoring Wireless LLC ("ITL"), Telesaurus VPC LLC ("TVL") and Skybridge Spectrum Foundation (collectively, "Petitioners"). Petitioners filed an application for review of the dismissal, arguing that their filing should be accepted because they were not the cause of the late filing.² For the reasons set forth below, we deny Petitioners' application for review.

II. BACKGROUND

2. In an *Order* released April 16, 2009,³ the Division granted the request of CGG Veritas Land, Inc. ("Veritas") for a waiver of the technical limits on secondary telemetry use of the 217-220 MHz band.⁴ The *Order* addressed and rejected objections raised by Petitioners.⁵ Veritas's associated application was granted the next day. A petition for reconsideration of the Division's action was due May 18, 2009,⁶ but Petitioners filed a petition for reconsideration electronically, via the Commission's

¹ CGG Veritas Land, Inc., *Order on Reconsideration*, 25 FCC Rcd 4897 (WTB MD 2010) (*Order on Reconsideration*).

² Application for Review by AMTS Consortium LLC, Intelligent Transportation & Monitoring Wireless LLC, Telesaurus VPC LLC and Skybridge Spectrum Foundation (filed June 11, 2010; errata copy filed June 12, 2010) ("AFR").

³ CGG Veritas Land, Inc., *Order*, 24 FCC Rcd 4641 (WTB MD 2009) (*Order*).

⁴ See 47 C.F.R. § 90.259(a). Automated Maritime Telecommunications System (AMTS) stations have primary status in the 217/219 MHz portion of the 217-220 MHz band. See Reallocation of the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz Government Transfer Bands, *Notice of Proposed Rule Making*, ET Docket No. 00-221, 15 FCC Rcd 22657, 22662 ¶ 11 (2000).

⁵ See *Order*, 24 FCC Rcd at 4642-44 ¶¶ 5-9. Two Petitioners hold AMTS geographic licenses for territory where Veritas proposed to operate.

⁶ Petitions for reconsideration are due thirty days from the date of public notice of the final action, but the due date is extended to the next business day if the thirtieth day falls on a weekend or holiday. See 47 C.F.R. §§ 1.4, 1.106(f). Thus, whether counted from release of the *Order* or from grant of the application, a petition for reconsideration was due Monday, May 18, 2009.

Universal Licensing System, in the early hours of May 19, 2009.⁷ The following day, they filed a request that the petition be accepted out of time, stating that Petitioners' internet service provider experienced an outage while they were attempting to file the petition electronically at 11:57 p.m. Eastern time on May 18.⁸

3. In the *Order on Reconsideration*, the Division dismissed the petition as untimely. It noted that the Commission had, on multiple occasions, specifically warned Petitioners that they "are not entitled to a waiver of the filing deadline on the grounds that, after waiting until shortly before the deadline to file, they encountered unexpected difficulties."⁹ The Division also concluded that the petition would have been denied had it been considered on the merits.¹⁰ Petitioners now seek review of this decision.

III. DISCUSSION

4. Petitioners do not dispute that the petition for reconsideration was filed after the filing deadline. Instead, they argue that the reasons for their late filing constituted "extremely unusual circumstances" meriting consideration of the untimely petition for reconsideration.¹¹ Petitioners attempt to distinguish decisions denying such relief, on the grounds that the delay in those instances was due to the filer's internal problems, while Petitioners' tardiness was caused solely by their internet service provider, and thus was out of their control.¹² We disagree. That the difficulties were caused by a third party does not bring this matter within the narrow exception to the filing deadline for "extremely unusual circumstances,"¹³ which "is limited to cases 'such as new facts that were unknowable at the time of the

⁷ Petition for Reconsideration by AMTS Consortium LLC, Intelligent Transportation & Monitoring Wireless LLC, Telesaurus VPC LLC and Skybridge Spectrum Foundation (filed May 19, 2009).

⁸ See Request to Accept Late Filing of Petition for Reconsideration (filed May 20, 2009).

⁹ See *Order on Reconsideration*, 25 FCC Rcd at 4898 ¶ 6 (citing Amendment of the Commission's Rules Concerning Maritime Communications, *Second Memorandum Opinion and Order and Fifth Report and Order*, PR Docket No. 92-257, 17 FCC Rcd 6685, 6691 ¶ 12 (2002) (dismissing a petition for reconsideration filed untimely by Petitioners' principal due to technical difficulties, and specifically "caution[ing him] and other future petitioners not to wait until the last day of the thirty-day period to file or, in the alternative, to plan ahead to account for unforeseen last-minute difficulties"); Regionet Wireless License, LLC, *Memorandum Opinion and Order*, 17 FCC Rcd 21263, 21265 ¶ 6 (2002) (stating, regarding another pleading filed by Petitioners' principal, that "electronic filers who wait until the last minute of the last day of the filing period to submit a pleading should not routinely expect a waiver"); Mobex Network Services, LLC, *Memorandum Opinion and Order*, 25 FCC Rcd 554, 557 n.32 (2010) (same, involving a pleading filed by Petitioners ACL, ITL, and TVL)).

¹⁰ See *id.* at 4898-99 n.15.

¹¹ See AFR at 2-3 (citing 21st Century Telesis Joint Venture v. FCC, 318 F.3d 192, 200 (D.C. Cir. 2003); Virgin Islands Tel. Corp. v. FCC, 989 F.2d 1231, 1237 (D.C. Cir. 1993); Reuters Ltd. v. FCC, 781 F.2d 946, 951-52 (D.C. Cir. 1986)).

¹² *Id.* at 1-2.

¹³ See Biennial Regulatory Review -- Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Memorandum Opinion and Order on Reconsideration*, WT Docket No. 98-20, 14 FCC Rcd 11476, 11479 ¶ 5 & n.8 (1999) ("In this respect, electronic filing is no different from manual filing, where applicants subject to a filing deadline must allow for contingencies such as malfunctioning word processors or copiers, mailing time, or *traffic tie-ups that hinder messenger delivery of filings to the Secretary's office*. We have consistently denied requests for extension of filing deadlines based on these types of contingencies 'The Commission [does not] consider as unusual or compelling [waiver requests] based upon claims that copying machines, delivery services or even, in most cases, inclement weather or illness, was responsible for the tardy filing.'" (emphasis added) (quoting First Auction of Interactive Video and Data Service (IVDS) Licenses, *Order*, 10 FCC Rcd 5415 (WTB 1995)).

action, or a party that did not have and could not have been expected to receive notice of the action through the exercise of prudence and due diligence, or a substantial shift in the state of the law.”¹⁴ In fact, the Commission rejected the argument that unanticipated technical problems constitute “extremely unusual circumstances” in another matter involving an untimely petition for reconsideration filed by Petitioners’ principal.¹⁵ The Commission also, in that proceeding, dismissed the contention¹⁶ that Division staff is prejudiced against Petitioners.¹⁷

5. Finally, even if the petition were timely, we agree with the Division that the three arguments in the petition are without merit. Specifically, the Petitioners first argue that they were not given adequate notice of Veritas’s application and waiver request, but, as the Division pointed out, Petitioners were not entitled to personal service of the application and waiver request.¹⁸ Moreover, they were not prejudiced because they had actual notice of the filing,¹⁹ and received a full opportunity to file their objection.²⁰ Petitioners also argue that the *Order* conflicted with prior precedent,²¹ but as the Division noted, the case cited by Petitioners addressed primary status in the 217-220 MHz band, while Veritas recognizes that it is secondary to AMTS geographic licensees.²² It does not follow from the denial of a request for primary status for telemetry that a request for secondary status should not be granted. Last, Petitioners claim that the *Order* was deficient because no technical analysis was provided, but the Division clearly cited and discussed Veritas’s technical explanation.²³

IV. CONCLUSION

6. In conclusion, the Division acted properly in dismissing Petitioners’ petition for reconsideration. As noted, Petitioners have missed other deadlines because they encountered unexpected

¹⁴ See Warren C. Havens, *Memorandum Opinion and Order*, 23 FCC Rcd 3210, 3212-13 ¶ 7 (2008) (*2008 Havens Denial*) (quoting Amendment of Section 2.106 of the Commission’s Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service, *Second Report and Order and Second Memorandum Opinion and Order*, ET Docket No. 95-18, 15 FCC Rcd 12315, 12360 ¶ 132 (2000)), *recon. denied, Order on Reconsideration*, 25 FCC Rcd 511 (2010) (*2010 Havens Denial*), *recon. dismissed, Order on Further Reconsideration*, 25 FCC Rcd 2123 (WTB MD 2010), *recon. pending*.

¹⁵ See *2008 Havens Denial*, 23 FCC Rcd at 3211-12 ¶¶ 4-7 (affirming dismissal of petition for reconsideration that was filed one day late “due to a technical problem beyond his control that delayed the electronic transmission of the petition to his legal counsel”; “That Havens’s difficulties were technical rather than practical does not bring this matter within the narrow exception for ‘extremely unusual circumstances.’”).

¹⁶ See AFR at 3.

¹⁷ See *2010 Havens Denial*, 25 FCC Rcd at 513 n.21; see also Mobex Network Services, LLC, *Memorandum Opinion and Order*, 25 FCC Rcd 3390, 3395-96 ¶ 11 (2010) (“Next, Havens, ACL, ITL, Skybridge, and TVL continue to assert that Bureau staff is biased against them. They point to various alleged errors in prior decisions, which they ascribe to staff prejudice. We conclude, as did the Division, that the record does not demonstrate prejudicial treatment, and we reject these unsupported allegations.”) (footnotes omitted), *recon. pending*.

¹⁸ See *Order on Reconsideration*, 25 FCC Rcd at 4898 n.15.

¹⁹ *Id.* at 4899 n.15. Upon request of Commission staff, Veritas notified Petitioners of the filing. See *Order*, 24 FCC Rcd at 4642 n.11.

²⁰ See Satellite Signals of New England, Inc., *Memorandum Opinion and Order*, 25 FCC Rcd 515, 519 ¶ 8 (2010) (party that had actual notice shortly after order was issued was not prejudiced by lack of personal service).

²¹ See Exelon Generation Company, LLC, *Order*, 19 FCC Rcd 18078 (WTB PSCID 2004).

²² See *Order on Reconsideration*, 25 FCC Rcd at 4898 n.15.

²³ See *Order*, 24 FCC Rcd at 4643-44 ¶ 8 (concluding that the proposed operations are no more likely to cause interference to primary licensees than operations not requiring a waiver, because the higher power is spread over a wider bandwidth and thus does not increase the spectral density).

difficulties in the final minutes before a filing was due. Rather than being “extremely unusual,” this circumstance appears to be common for Petitioners. We deny their application for review.

7. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c), and Section 1.115 of the Commission’s Rules, 47 C.F.R. § 1.115, the Application for Review filed by AMTS Consortium LLC, Intelligent Transportation & Monitoring Wireless LLC, Telesaurus VPC LLC and Skybridge Spectrum Foundation on June 11, 2010, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary